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HON. DENIS R. HURLEY

MEMORANDUM

TO THE HONORABLE DENIS R. HURLEY

★ United States District Judge

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ NOV 20 2012

★ DEC 05 2012 ★

U.S. DISTRICT COURT E.D.N.Y.

RE: AVELLINO, Salvatore

★ DOCKET NO.: 90-CR-446

★ LONG ISLAND OFFICE

REQUEST FOR COURT DIRECTION:
FOLLOW-UP

★ LONG ISLAND OFFICE

On July 12, 2011, the Probation Department submitted a memorandum to Your Honor requesting court direction with regard to a request received from the releasee to consider an early termination of his term of supervised release. The releasee's reasons for the request and the Probation Department's position with respect to the request were specified in the aforementioned memorandum. In sum, the Probation Department supported an early termination, on the grounds that terms of supervised release being ordered to run consecutively was statutorily impermissible. In addition, we questioned the permissibility of the imposition of terms of supervised release that were greater than statutorily authorized (5 year terms imposed on Counts 1, 70, and 71 - which were only Class C felonies and statutorily restricted to 3 years). On July 19, 2011, Your Honor issued an order directing the government to submit it's position with regard to the early termination request by September 9, 2011, and for the releasee to respond, if necessary, by September 30, 2011. Your Honor indicated that following receipt of the government's position and research, along with defense counsel's reply, if any, that the Court would rule on the issue presented.

On September 7, 2011, AUSA Christopher Ott submitted a letter to the Court detailing the government's position with respect to the early termination request. In essence, the Government concurred with the position of the Probation Department, and effectively did not object to the granting of an early termination of supervised release in this case. On September 15, 2011, the releasee's attorney, Brian Linder, Esq., submitted a letter advising that in light of the Government's position, the releasee would not be submitting any further material in support of his early termination request.

Since the aforementioned submissions to the Court (copies of all prior memos and correspondence have been attached for the Court's review), the Probation Department has not received further direction/instruction with respect to the issues presented in our original July 11, 2011 memorandum. As such, the Probation Department has continued to supervise the releasee subject to the terms of the original sentence. On October 12, 2012, the releasee completed his sixth year under supervised release and he remains under active supervision at this time. The releasee appears to have remained in compliance with all conditions of his supervision, and no violation actions have been initiated. Considering the legal questions involved in the present issue (permissibility of consecutively ordered terms of supervision, and terms of supervision imposed above the statutorily authorized terms) the Probation Department would like to ensure the appropriateness of continuing to supervise this case. We do however, stand by our original recommendation that the Court grant an early termination in this matter.

AVELLINO, Salvatore

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As such, at this juncture, we respectfully request guidance from the Court on how to proceed with the remaining term of supervised release. Below is an order which Your Honor may utilize to convey the Court's direction. If Your Honor desires to authorize an early termination we have attached an Early Termination Order which may be used to complete that action. As always, should Your Honor require any additional information, the Probation Department remains available to assist in any way possible. The undersigned officer may be reached at (631) 712-6325.

RESPECTFULLY SUBMITTED:

EILEEN KELLY
CHIEF U.S. PROBATION OFFICER

PREPARED BY:

Edward Kanaley

Edward Kanaley
Senior U.S. Probation Officer

APPROVED BY:

David J. Washington

David J. Washington
Supervising U.S. Probation Officer

November 27, 2012

ORDER OF THE COURT

Request for Early Termination is hereby:

DKH
Granted: Requires completion of attached Early Termination Order

~~Denied/Continue Supervised
Release as Originally Ordered:~~

Denise H. Hurley
The Honorable Denise R. Hurley
Senior U.S. District Judge

12-3-12
Date

~~Other Action:~~

~~The Honorable Denise R. Hurley
Senior U.S. District Judge~~

~~Date~~